Supreme Court, U.S.
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No. 97-123

In The

Supreme Court of the United States

October Term, 1996

VINCENT L. PRYNER,

Petitioner,

v.

TRACTOR SUPPLY COMPANY, INC.,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF IN OPPOSITION

CHARLES W. PAUTSCH
Counsel of Record
JAMES B. SHERMAN
KERRY E. DWYER
WESSELS & PAUTSCH, P.C.
Two Plaza East
330 East Kilbourn Avenue
Suite 1475
Milwaukee, WI 53202
(414) 291-0600

DAVID L. SWIDER
BOSE, MCKINNEY & EVANS
2700 First Indiana Plaza
135 North Pennsylvania
Indianapolis, IN 46204
(317) 684-5161

Counsel for Respondent Tractor Supply Company, Inc.

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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QUESTION PRESENTED

Whether section 16 of the Federal Arbitration Act, 9 U.S.C. § 16, applies to collective bargaining agreements in non-transportation industries.

CORPORATE STATEMENT

Respondent, Tractor Supply Company, Inc., has no parent companies or nonwholly owned subsidiaries to be listed pursuant to Rule 29.6.

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BRIEF IN OPPOSITION

The decisions below, jurisdiction and statutory provisions involved are accurately stated in the Petition for Writ of Certiorari (at 2-3).

STATEMENT OF THE CASE

The Petitioner, Vincent L. Pryner ("Pryner"), filed an initial and later amended complaint against Respondent, Tractor Supply Company, Inc. ("TSC"), alleging that TSC discriminated against him in the terms and conditions of his employment in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, the Civil Rights Act of 1866, 42 U.S.C. § 1981, and Title I of the Americans With Disabilities Act of 1992, 42 U.S.C. § 12101, *et seq.* (TSC's App. at 31.)[1] While Pryner was employed by TSC, he was a member of a collective bargaining unit represented by Chauffeurs, Teamsters, Warehousemen and Helpers Local No. 135 (the "Union"). The terms and conditions of Pryner's employment were governed by a collective bargaining agreement ("CBA") between TSC and the Union.

The CBA includes, *inter alia*, a "Grievance and Arbitration Procedure" for the resolution of any disputes "involving interpretation or application of the provisions of this Agreement." (Pryner's App. at 1a-4a.)[2] Section 11

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[1] "TSC's App." refers to the Appendix to TSC's Petition for Writ of Certiorari in 96-1830.

[2] "Pryner's App." refers to the Appendix to Pryner's Brief in Opposition in 96-1830.

of the Grievance and Arbitration Procedure provides that the decision of the arbitrator is "final and binding on all parties." (*Id.* at 4a.) The CBA authorizes TSC to impose discipline on an employee, up to and including discharge, for "just cause." (TSC's App. at 4.) The CBA also contains a "No Discrimination" provision which, *inter alia*, prohibits discrimination on the basis of race and an "Americans With Disabilities Act" provision which addresses TSC's duty to make reasonable accommodations to individuals with a disability. (TSC's App. at 30-31.)

In light of the collective bargaining agreement's provisions mandating arbitration, TSC moved to dismiss Pryner's claims for lack of subject matter jurisdiction or, in the alternative, to stay, pursuant to section 3 of the Federal Arbitration Act ("FAA"), 9 U.S.C. § 3, the district court's proceedings pending arbitration. (TSC's App. at 31.) The district court denied TSC's motion. (TSC's App. at 28.) Pursuant to section 16 of the FAA, 9 U.S.C. § 16, TSC brought an interlocutory appeal of the district court's decision denying the stay to the United States Court of Appeals for the Seventh Circuit ("Seventh Circuit"). (TSC's App. at 6.) After the district court refused to stay proceedings pending the appeal to the Seventh Circuit, TSC applied to the Seventh Circuit for a stay of trial. The Seventh Circuit issued an order granting the stay pending resolution of the appeal.

The Seventh Circuit affirmed the decision of the district court. (TSC's App. at 1-2.) In doing so, the Seventh Circuit initially reviewed the basis for its jurisdiction to hear the appeal. (TSC's App. at 6-15.) The Seventh Circuit, after analyzing the exclusionary language of section 1 of the FAA, 9 U.S.C. § 1, determined that section 16 of

the FAA applied to collective bargaining agreements in non-transportation industries.[3]

On May 14, 1997, the Honorable John Paul Stevens, Associate Justice of this Court and Circuit Justice for the Seventh Circuit, issued an order granting a stay of the trial court proceedings pending filing of a timely petition for writ of certiorari and subsequent resolution, either by a denial of the petition for writ of certiorari or determination on the merits, of this action before this Court. On May 16, 1997, TSC filed a timely Petition for Writ of Certiorari (Case No. 96-1830).

REASONS FOR DENYING THE PETITION

TSC respectfully contends that this Court should deny Pryner's cross-petition for writ of certiorari which seeks review of the jurisdiction of the Court of Appeals.[4]

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[3] The Seventh Circuit also stated that application of the substantive provisions of the FAA to collective bargaining agreements in non-transportation industries is improper because "substantive issues in suits that are within the scope of both the arbitration act and section 301 of the Taft-Hartley Act [29 U.S.C. § 185] are governed by section 301." (TSC's App. at 26.) This issue is addressed in TSC's Petition for Writ of Certiorari in Case No. 96-1830. In its Petition, TSC challenges this ruling of the Seventh Circuit and argues that the substantive provisions of the FAA must be applied to the merits of the case.

[4] While the Petitioner poses the question presented in its petition as a broad request for review of the applicability of the FAA to collective bargaining agreements in non-transportation industries, in fact, the question presented by this petition is

The Seventh Circuit held that section 16 of the FAA is applicable to collective bargaining agreements in non-transportation industries. In arriving at this conclusion, the Seventh Circuit reviewed the statutory language, case law from this Court and the other Circuits and the application of section 301 of the Taft-Hartley Act, 29 U.S.C. § 185. The examination of this issue concerning the applicability of section 16 of the FAA was thorough and correct. Furthermore, the split in the Circuits on this issue is neither as severe nor apparent as the Petitioner contends. This Court should deny the cross-petition for writ of certiorari.

1. The Seventh Circuit's Opinion.

A. The Seventh Circuit properly construed the exclusionary language of section 1 of the FAA.

The FAA covers maritime transactions and transactions involving commerce. 9 U.S.C. § 2. Section 16 of the FAA, 9 U.S.C. § 16, states, *inter alia*, "[a]n appeal may be taken from . . . an order . . . refusing a stay of any action under section 3 of this title . . . " This language, standing alone, clearly gives TSC the right to appeal the district court's decision refusing a stay under section 3 of the FAA. However, the FAA also contains an exclusionary provision which states, *inter alia*, "nothing herein contained shall apply to contracts of employment of seamen,

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limited to whether section 16 of the FAA applies to collective bargaining agreements in non-transportation industries as that is the only section of the FAA the Seventh Circuit expressly held applicable to collective bargaining agreements in its decision.

railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. The Seventh Circuit properly interpreted this exclusionary language to limit the exclusion to employment contracts in the transportation industry. (TSC's App. at 9-10.)

Sound principles of statutory construction support application of this reading of the exclusionary clause. First, one of the canons of statutory construction holds that courts should "avoid a reading [of statutory language] which renders some words altogether redundant." *Cole v. Burns International Security Services*, 105 F.3d 1465, 1470 (D.C. Cir. 1997), *citing Gustafson v. Alloyd Co.*, 513 U.S. 561, 115 S. Ct. 1061, 1069 (1995), *citing United States v. Menasche*, 348 U.S. 528, 538 (1955). As several courts have noted, if the final phrase of the exclusionary clause – "any other class of workers engaged in foreign or interstate commerce" – applied to all workers whose jobs have any effect on commerce, the specific inclusion of seamen and railroad workers would have no significance. *Cole*, 105 F.3d at 1470; *Rojas v. TK Communications, Inc.*, 87 F.3d 745, 747-48 (5th Cir. 1996); *Asplundh Tree Expert Co. v. Bates*, 71 F.3d 592, 600-601 (6th Cir. 1995), *citing DiCrisi v. Lyndon Guaranty Bank*, 807 F. Supp. 947, 953 (W.D. N.Y. 1992). Clearly, if Congress wanted to exclude all employment contracts from the FAA, it could have simply excluded "contracts of employment" without any additional language.

The second canon of statutory construction which supports this reading of the exclusionary clause is the rule of *ejusdem generis* which "limits general terms which follow specific ones to matters similar to those specified." *Cole*, 105 F.3d at 1471, *citing Gooch v. United States*, 297

U.S. 124, 128 (1936); *accord Harrison v. PPG Industries, Inc.*, 446 U.S. 578 (1980). "In this case, the general phrase, 'any other class of workers engaged in foreign or interstate commerce' takes its meaning from the specific terms preceding it, 'seamen' and 'railroad employees' and, therefore, 'under the rule of ejusdem generis, [it] include[s] only those other classes of workers who are likewise engaged directly in commerce, that is, only those other classes of workers who are actually engaged in the movement of interstate or foreign commerce or in work so closely related thereto as to be in practical effect a part of it.' " *Cole*, 105 F.3d at 1471, *citing Asplundh*, 71 F.3d 592, 598, *quoting Tenney Engineering*, 207 F.2d 450, 452.

Thus, the well established canons of statutory construction support the Seventh Circuit's decision. The Petitioner argues that the legislative history (or, more aptly, the legislative lobbying) of the FAA indicates that only commercial arbitration was intended to be covered by the FAA. However, "in a case such as this, where the statutory text does not admit of serious ambiguity, and where firmly established case law is absolutely clear on the meaning of the statute, legislative history is, at best, secondary, and, at worst, irrelevant." *Patterson v. Tenet Healthcare, Inc.*, 113 F.3d 832, 835-36 (8th Cir. 1997), *citing Cole*, 105 F.3d at 1472, *citing Davis v. Michigan Department of Treasury*, 489 U.S. 803, 808-09 n. 3 (1989). This "history" is irrelevant considering the unambiguous text.

B. The Seventh Circuit's decision is not inconsistent with this Court's precedent.

This Court has never addressed the application of the FAA to collective bargaining agreements. In *Textile Workers v. Lincoln Mills*, 353 U.S. 448 (1957), this Court held that section 301 of the Taft-Hartley Act, 29 U.S.C. § 301, created a body of federal common law to govern disputes arising out of labor arbitration. However, the majority opinion did not expressly reject the applicability of the FAA, nor did it address it at all.

Similarly, in *United Paperworkers International Union v. Misco, Inc.*, this Court did not specifically hold that the FAA does not apply to collective bargaining agreements, but rather, in a footnote cited the exclusionary language of the FAA and noted that the courts often look to the FAA for guidance on labor arbitration cases. 484 U.S. 29, 40 n. 9 (1987). As the Seventh Circuit stated in its opinion, this footnote in *Misco* gives no reason for its statement and furthermore is inconsistent with this Court's decision in *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 25 n. 2 (1991), "which expressly left the question open." (TSC's App. at 7.)

2. The Circuit Split Is Not As Apparent Nor As Severe As The Petitioner Claims.

The issue the Petitioner has set forth is limited to whether collective bargaining agreements outside the transportation industry are covered by section 16 of the FAA. The Petitioner claims that the Circuits have taken

five different positions on this point. (Petition for Writ at 8.) This claim is simply incorrect.

Currently, all of the Circuits which have directly addressed the exclusionary language with respect to individual employment contracts have construed the exclusion narrowly, limiting it to those employment contracts covering workers engaged in the transportation of goods in commerce. *See O'Neil v. Hilton Head Hospital*, 115 F.3d 272, 274 (4th Cir. 1997); *Patterson v. Tenet Healthcare, Inc.*, 113 F.3d 832, 835-36 (8th Cir. 1997); *Great Western Mortgage Corp. v. Peacock*, 110 F.3d 222, 226-27 (3d Cir. 1997); *Cole v. Burns International Security Services*, 105 F.3d 1465, 1470 (D.C. Cir. 1997); *Rojas v. TK Communications, Inc.*, 87 F.3d 745, 747-48 (5th Cir. 1996); *Matthews v. Rollins Huding Hall Co.*, 72 F.3d 50, 53 n. 3 (7th Cir. 1995); *Asplundh Tree Expert Co. v. Bates*, 71 F.3d 592, 600-601 (6th Cir. 1995); *Erving v. Virginia Squires Basketball Club*, 468 F.2d 1064, 1069 (2d Cir. 1972); *Dickstein v. duPont*, 443 F.2d 783, 785 (1st Cir. 1971). With respect to collective bargaining agreements, the Circuits are not in complete agreement as to the scope of the exclusion. Some Circuits, like the Seventh, apply the same narrow construction of the exclusion applied to individual employment agreements to collective bargaining agreements. *Maryland Casualty Co. v. Realty Advisory Board*, 107 F.3d 979, 982 (2d Cir. 1997); *Tenney Engineering Inc. v. United Electrical, Radio and Machine Workers*, 207 F.2d 450, 452-53 (3d Cir. 1953) (en banc) (cited with approval in *Great Western Mortgage v. Peacock*, 110 F.3d at 227). Those Circuits that have excluded all collective bargaining agreements from FAA coverage often have done so with little or no discussion or analysis. *Harrison v. Eddy Potash, Inc.*, 112 F.3d 1437,

1454 (10th Cir. 1997), *petition for cert. filed*, Aug. 7, 1997 (Case No. 97-232); *Domino Sugar v. Sugar Workers Local 392*, 10 F.3d 1064, 1067 (4th Cir. 1993); *Posadas de Puerto Rico v. Asociacion de Empleados*, 873 F.2d 479, 482 (1st Cir. 1989); *International Union of Electrical, Radio and Machine Workers, AFL-CIO v. Ingram Manufacturing Co.*, 715 F.2d 886, 889 (5th Cir. 1983), *cert. denied*, 466 U.S. 928 (1984). While three Circuits, in their most recent pronouncement on the matter, have specifically stated the issue remains undecided. *Brisentine v. Stone & Webster Engineering Corp.*, 117 F.3d 519, 525 (11th Cir. 1997); *American Postal Workers Union of Los Angeles, AFL-CIO v. United States Postal Service*, 861 F.2d 211, 215 n. 2 (9th Cir. 1988); *Bacashihua v. United States Postal Service*, 859 F.2d 402, 405 (6th Cir. 1988) (court doesn't determine scope of exclusion because postal worker is "engaged in foreign or interstate commerce"). Thus, while there is an arguable split in the Circuits, it is not as clear nor as severe as Plaintiff states.

Furthermore, only one other case has decided the precise question the Petitioner raises – whether section 16 of the FAA applies to collective bargaining agreements in non-transportation industries. *See Maryland Casualty*, 107 F.3d at 982. In *Maryland Casualty*, the Second Circuit held that section 16(a)(2) of the FAA provided the court with jurisdiction over an appeal of an interlocutory order enjoining an arbitration proceeding. *Id.* Thus, no other court that has addressed the precise issue posed by this question is in conflict with the Seventh Circuit's opinion. TSC submits that this issue is likely to resolve itself among the Circuits, much the same way as the Circuits have gelled recently on the applicability of the FAA to individual employment contracts. *See, e.g., O'Neil*, 115

F.3d at 274; *Patterson*, 113 F.3d at 835-36; *Great Western Mortgage Corp.*, 110 F.3d at 226-27; *Cole*, 105 F.3d at 1470; *Rojas*, 87 F.3d at 747-48; *Asplundh Tree Expert Co.*, 71 F.3d at 600-601. First, recent cases from the Second and Third Circuits have reiterated the applicability of the FAA to collective bargaining agreements. *See Maryland Casualty Co.*, 107 F.3d at 982; *Great Western Mortgage*, 110 F.3d at 227 (*citing Tenney*, 207 F.2d 452-53, with approval). In addition, cases in the Ninth and Sixth Circuits have specifically stated the issue is open despite earlier cases which cursorily stated the FAA did not apply to collective bargaining agreements. *Compare American Postal Workers of Los Angeles*, 861 F.2d at 215 n. 2, *with Kemner v. District Council of Painting and Allied Trades*, 768 F.2d 1115, 1118 n. 1 (9th Cir. 1985); *Bacashihua*, 859 F.2d at 405, *with Occidental Chemical v. International Chemical Workers Union*, 853 F.2d 1310, 1315-16 (6th Cir. 1988). In light of these events, this matter is one better left to percolate in the courts below.

CONCLUSION

The issue the Petitioner poses in his petition is not worthy of review by this Court. First, the Petitioner has exaggerated the extent of the split in the Circuits. The split simply is not as severe as the Petitioner contends. Second, the Seventh Circuit and the Second Circuit, the only Circuits to consider the application of section 16 of the FAA to collective bargaining agreements, are in agreement on the issue. Because there is no direct split on this issue, it is best left to resolve itself in the Circuit Courts without this Court's intervention. Finally, the Seventh

Circuit properly construed the exclusion to the FAA to limit the exclusion to employment contracts in the transportation industry. Due to these reasons, the Respondent respectfully requests that this Court deny the petition for writ of certiorari.

Dated this 16th day of September, 1997.

Respectfully submitted,

CHARLES W. PAUTSCH
Counsel of Record
JAMES B. SHERMAN
KERRY E. DWYER
WESSELS & PAUTSCH, P.C.
330 East Kilbourn Avenue
Suite 1475
Milwaukee, WI 53202
(414) 291-0600

DAVID L. SWIDER
BOSE, MCKINNEY & EVANS
2700 First Indiana Plaza
135 North Pennsylvania
Indianapolis, IN 46204
(317) 684-5161

Counsel for Petitioner Tractor Supply Company, Inc.